

STATE OF MICHIGAN
BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION

COMPLAINT AGAINST:

HON. DAVID MARTIN BRADFIELD
Judge, 36th District Court
Detroit, MI 48226

FORMAL COMPLAINT No. 79

DECISION AND RECOMMENDATION FOR ORDER OF DISCIPLINE

At a session of the Michigan Judicial Tenure Commission, held on December 12, 2005, at which the following Commissioners were

PRESENT:

Hon. James C. Kingsley, Chairperson
Hon. Barry M. Grant, Vice-Chairperson
Richard D. Simonson, Secretary
Carole Chiamp, Esq.
Diane M. Garrison
Hon. Kathleen J. McCann
Thomas J. Ryan, Esq.
Hon. Jeanne Stempien
Hon Michael J. Talbot

INTRODUCTION

The Judicial Tenure Commission of the State of Michigan ("Commission") files this recommendation for discipline against Hon. David Martin Bradfield ("Respondent"), who at all material times was a Judge of the 36th District Court for the City of Detroit, Wayne County, Michigan. This action is taken pursuant to the authority of the Commission under Article 6, § 30 of the Michigan Constitution of 1963, as amended, and MCR 9.203.

On June 6, 2005, the Commission issued a formal Complaint against Respondent. The two counts of the Complaint charged Respondent with judicial misconduct arising out of two separate incidents. On June 14, 2005, the Michigan Supreme Court appointed Hon. J. Richard Ernst, retired Judge of the 23rd Judicial Circuit Court, to serve as Master in these proceedings.

On June 22, 2005, Respondent filed an answer to the Complaint. Respondent admitted that his conduct violated the Code of Judicial Conduct, Canons 1 and 2A. Respondent denied the remaining allegations of judicial misconduct in the Complaint.

On August 24, 2005, Judge Ernst held a hearing pursuant to MCR 9.211. On September 22, 2005, he issued his findings of fact and conclusions of law, a copy of which is attached at Exhibit A. On October 24, 2005, Respondent filed objections to the Master's Report. On November 4, 2005, the Examiner filed his Reply to Respondent's objections to the Master's Report.

On November 21, 2005, the Commission heard Respondent's objections to the Master's Report pursuant to MCR 9.216. At the hearing, Respondent acknowledged that his conduct violated Canons 1 and 2A of the Code of Judicial Conduct.¹ The Commission recommends that the Supreme Court sanction Respondent for the reasons stated below.

FINDINGS OF FACT

The Commission adopts and incorporates by reference the findings of fact contained in the Master's Report, and makes certain additional findings of fact indicated

¹ Transcript at 9:3.

by references to the record herein. The facts pertinent to our Recommendation are as follows:

1. **Count I**

Count I is based upon Respondent's conduct on April 5, 2005 in and near the 36th District Court. The 36th District Court is located on Madison Street in the City of Detroit.² Thousands of witnesses, victims, lawyers and members of the public enter the courthouse through the public entrance at the Southwest corner of Madison Street.³ Judges may privately enter the courthouse through a glass door bordered by windows that face south onto Madison Street. The Judges' entrance is clearly visible from the public entrance.⁴ Outside the courthouse, Judges have reserved parking on both sides of Madison Street. Officers of the Detroit Police Department are stationed at the Judges' entrance to the courthouse and monitor the Judges' parking spaces.

Mr. Anthony Adams ("Mr. Adams") is Deputy Mayor of the City of Detroit. To the Master, Mr. Adams appeared as a "distinguished looking and impeccably dressed, late middle-aged gentleman." Mr. Adams was six feet, four inches tall and weighed 240 pounds. Mr. Adams is also an attorney and has appeared in the Respondent's

² The Master's Report incorrectly lists the Court as located on Monroe Street. The Court is located at 421 Madison in the City of Detroit.

³ Any individual Judge of the Court may handle up to 300 cases a day. (Tr. Aug. 24, 2005 at 263:9.) It is not uncommon for a Judge to hear 5,000 cases in a calendar quarter. (Tr. Aug. 24, 2005 at 264:21.)

⁴ See Ex. 1 (showing public sidewalk with Judges' entrance on right). The Judges' door immediately opens into a small vestibule and a private elevator which leads to chambers. See Ex. 4 (showing Respondent with Mr. Adams and Judge Ross Adams inside vestibule).

courtroom on multiple occasions.⁵ Mr. Adams is married to Judge Deborah Ross Adams ("Judge Ross Adams") of the 36th District Court.

Around lunchtime on April 6, 2005, Mr. Adams, dressed in a suit and tie, was sitting in a city-owned black Crown Victoria with its motor running on Madison Street, outside the 36th District courthouse in the City of Detroit. Mr. Adams was waiting for his wife, Judge Ross Adams, to join him for lunch. Mr. Adams was in a spot reserved for Judges on Madison Street. Even though he was not a Judge, as liaison to the 36th District Court and as Deputy Mayor, Chief Judge Marylin E. Atkins ("Chief Judge Atkins") had authorized Mr. Adams to park in the Judges' parking area.

Respondent, returning to the courthouse in his car, spotted Mr. Adams in the Judges' parking area on Madison Street. Respondent did not recognize Mr. Adams. There were parking spaces available to Respondent in the Judges' parking area.⁶ Instead of parking his car in an available space, Respondent initiated a confrontation with Mr. Adams over the fact that Mr. Adams was parking in a space reserved for Judges. Respondent was not authorized to enforce parking restrictions on Madison Street. Respondent pulled his car alongside Mr. Adams' and stated, "I'm Judge Bradfield," and told Mr. Adams to "move [his] mother fuckin' car or he would have my ass ticketed and towed." Respondent testified that he stated to Mr. Adams, "I can be as street as you are. Move the mother fuckin' car." In response, Mr. Adams "just looked" at Respondent and said nothing.

⁵ Tr. Aug. 24, 2005 at 59-59.

⁶ After hearing the testimony, the Master rejected Respondent's contention that no parking was available on Madison. See Exs. 2 and 3 (photos showing spaces available).

Respondent contended that Mr. Adams initiated the encounter by stating either “we know who you are mother fucker,” or “take a pill.” The Master rejected Respondent’s contention since “[a]ll witnesses who observed Mr. Adams noted his reserved demeanor and that he failed/refused to respond to Judge Bradfield’s vituperations...” Respondent also contended that Mr. Adams should have diffused the confrontation by introducing himself as Deputy Mayor. The Master found this contention to be “specious at best, and without merit.”

When Mr. Adams did not move his car, Respondent waved to the police officer on duty, Officer Sheila D. Gray (“Officer Gray”). Officer Gray is five feet, four inches tall. In response to Respondent, Officer Gray approached Mr. Adams and “told him he need[ed] to—somebody need[ed] to be the bigger person and move.” The Master concluded that Officer Gray approached Mr. Adams because she considered Respondent to be “emotionally upset toward Mr. Adams over his vehicle standing in a parking area reserved for Judges.” Mr. Adams moved his car forward, leaving more space for Respondent to park.

Incensed that Mr. Adams had remained in the Judges’ parking area, Respondent again pulled up next to Mr. Adams’ car and stated, “move your car or I’ll have your ass ticketed and towed.” Mr. Adams did not respond to Respondent, and just looked at him.

At that time, Judge Ross Adams’ clerk DiAnn Webb (“Ms. Webb”) left the courthouse through the Judges’ door and approached Mr. Adams to tell him that his wife, Judge Ross Adams, was running late. Again, Mr. Adams pulled up further to make

more room available in the Judges' parking area.⁷ Mr. Adams exited his car. Together, Mr. Adams and Ms. Webb walked towards the Judges' entrance to the courthouse. As a judicial clerk, Ms. Webb was authorized to use the Judges' entrance, and Mr. Adams was specifically authorized by Chief Judge Atkins.

Upon observing Mr. Adams exit his car and approach the Judges' door, Respondent became incensed and rushed to intercept him. Respondent met Ms. Webb and Mr. Adams so that all three were standing in the middle of the public sidewalk.⁸ Respondent started yelling at Mr. Adams, telling him that he was "not a Judge" and "couldn't use that entrance" and called him a "mother fucker" repeatedly.

Respondent then grabbed Mr. Adams by the shoulder, poked him in the chest multiple times and challenged him to fight. Ms. Webb testified that Respondent "[s]tated that [Mr. Adams] could not come in and was poking Mr. Adams and calling him a bunch of mother fuckers at that time, too... [H]e told him that he could not enter into the Judges' entrance, and he would go—he can go to the street—in that sense of a threatening manner to him, he can go to the street, but he's not a Judge, and he's not allowed to come in the Judges' entrance." Mr. Adams did not respond to Respondent's name-calling or invitations to fight.

The Master concluded that Respondent's conduct constituted an assault and battery. Mr. Adams found the public assault by Judge Bradfield to be "embarrassing, and it was denigrating because there were a number of people that were walking by the

⁷ Tr. Aug. 24, 2005 at 33:11-16 (testimony of Mr. Adams, "I pulled up parallel with that sign" located to the left in Exhibit 1, three car lengths away from the Judges' entrance).

⁸ Exs. 2 and 3 (photos showing group on sidewalk).

court at that time that oversaw—overheard the situation.”⁹ Respondent contended that he poked Mr. Adams only “to get his attention—as he was looking at the officer, to get his attention, I said, then you go down here to the door.” After hearing the testimony and observing the demeanor of the witnesses, the Master found Respondent’s explanation without merit.

To diffuse the situation, Officer Gray interposed herself between the two men on the sidewalk, and Respondent entered the courthouse through the Judges’ entrance. Mr. Adams went inside the courthouse through the public entrance although he was authorized to also use the Judges’ door. Ms. Webb and Mr. Adams met Judge Ross Adams in her chambers. Judge Ross Adams, taking Ms. Webb and Mr. Adams with her, went downstairs to the Judges’ entrance to speak with Officer Gray about what had happened.¹⁰

After exiting from the Judges’ elevator, Judge Ross Adams, Ms. Webb and Mr. Adams met Respondent in the vestibule. Two Detroit Police Officers, Officer Gray and Officer Morris C. Syfax (“Officer Syfax”) were present in the vestibule. The vestibule has one wall of windows and a glass door which both face Madison Street. Respondent again yelled at Mr. Adams, calling him a “mother fucker” and invited Mr. Adams to fight. Mr. Adams testified that Respondent screamed that, “I was a mother fucker, he was street, and he basically would kick my ass.” Officer Gray testified “[h]e called Mr. Adams a mother fucker.” Officer Syfax testified “I heard him say, mother fucker, I can

⁹ Tr. Aug. 24, 2005 at 34:25-35:1-3.

¹⁰ Tr. Aug. 24, 2005 at 110:20-111:17.

go street.” Mr. Adams did not respond to Respondent’s threats. Officer Syfax defused the situation by persuading Respondent to leave by taking the Judges’ elevator.

After receiving a phone call from Judge Ross Adams, Chief Judge Atkins cut short her lunch, returned to the courthouse and held a meeting with Mr. Adams, Judge Ross Adams, Ms. Webb and Respondent. Respondent’s irrational anger continued, and, further indicating his lack of self restraint, he described Mr. Adams as being “street” and “unprofessional” and again called him a “mother fucker.” Respondent persisted that, “I’m not going to take anyone talking to me like that,” and, “it’s a man thing.” Respondent “raised his voice at [Judge Ross Adams] and was shaking his finger in her face—toward her.” Respondent again escalated the confrontation, this time before the Chief Judge.

When Chief Judge Atkins asked about his conduct, Respondent made excuses that the Master found were pretext. Respondent contended that he was concerned for the security of the Court and its employees and that he didn’t want another “Oklahoma” bombing. Respondent speculated that Mr. Adams could have been a “well-dressed thug.” The following exchange occurred at the August 24, 2005 hearing:

Q: When you saw this person you thought was a well dressed thug, the person you called over to deal with it was the 5’4” diminutive police officer?

A: She was the one in charge of that door, and that was the only person that I saw coming out of that door, and it was approximately two minutes into this.

Q: And yet when you saw Mr. Adams getting out of the car, then you want to run to the police officer’s rescue, is that right?

A: There were two women. One of—both of them were of a short stature. Mr. Adams is a large individual, and I thought that one of the possibilities was that he could be a well dressed thug since he said, we know who you are, Mother Fuck. And “we” meaning what “we?” What group is he referring to?

Chief Judge Atkins rejected Respondent's assertions. "He was very angry. He was very angry, and he was putting it under the guise of protecting the parking spaces of the Judges, and he didn't know who it was, and [that] it was already taken care of..." Chief Judge Atkins stated that the question concerning use of the elevator by outsiders did not arise during the meeting. She continued, "[i]t didn't have anything [to do] about somebody coming into the building or going up the elevator. It strictly had to do with who was parking in the Judges' parking spot."

After hearing the testimony and observing the demeanor of the Respondent and the other witnesses, the Master dismissed Respondent's claims. The Master stated that they were "simply not credible and [are] not believed."

The next day, Respondent wrote identically worded letters of apology to Judge Adams and Adams acknowledging that his "actions were an embarrassment to myself and to the office that I hold" and that "we as judges are held to a higher standard."

2. Count II

Effective October 7, 2002, the Gem Theater Parking Structure commenced an agreement with the 36th District Court to provide parking spaces for Judges of the Court. Prior to that date, Respondent drove his vehicle into the structure and identified himself as a Judge of the 36th District Court to Noah E. Lee ("Mr. Lee"), an employee of the Gem Theater Parking Structure. Respondent stated to Mr. Lee that he wanted to park in the garage. Respondent became infuriated when Mr. Lee informed him that

there were no parking spaces available for Judges at that time. He began to "rant and rave that he should have parking over there."¹¹

Mr. Lee provided Respondent with a copy of the 36th District Court agreement and explained that parking spaces were not yet available. Mr. Lee pointed Respondent to another space. Mr. Lee testified that, "he had told me that he was a Judge, and the first thing I said to myself, I said, well, there's no problem here; I can handle this on my—I can just put him over here on this side, and it was quite natural to my mind. I'm saying, he's a Judge; he'll understand what I'm saying."¹² Respondent refused to listen to Mr. Lee's explanation and angrily threw the document to the ground. Respondent refused or failed to consider an alternate parking space and recklessly sped out of the parking garage with squealing tires. Mr. Lee promptly reported the incident to the 36th District Court Administrator, not out of anger toward Respondent, but to protect his employer from retaliatory action.

Respondent contended that he did not recall the Gem Theater incident. In his answer to the complaint, Respondent stated, "if such an incident occurred it did not involve Judge Bradfield... Assuming such an incident occurred and assuming the person driving the car was a Judge, that Judge was not Judge Bradfield."¹³ At the hearing, Mr. Lee identified Respondent as "the same individual who was present at the parking structure on that Wednesday in October of 2002."¹⁴ The Master rejected Respondent's contention and found that the testimony of Mr. Lee was credible.

¹¹ Tr. Aug. 24, 2005 at 209:25.

¹² Tr. Aug. 24, 2005 at 210:19-24.

¹³ Ans. at ¶ 49.

¹⁴ Tr. Aug. 24, 2005 at 208:20-22.

STANDARD OF PROOF

The standard of proof in judicial disciplinary matters is the preponderance of the evidence standard. In re Ferrara, 458 Mich 350, 360; 582 NW2d 817 (1998).

CONCLUSIONS OF LAW

Respondent has admitted that his conduct is sanctionable.¹⁵ Canon 1 of the Michigan Code of Judicial Conduct requires a Judge to “personally” observe “high standards of conduct so that the integrity and independence of the judiciary may be preserved.” The purpose of Canon 1, and the entire Michigan Code of Judicial Conduct, is an “independent and honorable judiciary.” See Canon 1. Respondent admits that he failed to observe the high standards of conduct necessary to the preservation of the integrity and independence of the judiciary, contrary to Canon 1. The Master determined that in both incidents, Respondent “allowed his unreasonable and unfettered anger to govern his words and conduct... [and] demonstrated an unreasonably volatile temperament and a willful absence of self-restraint” in violation of Canon 1.

Canon 2A requires a Judge to “avoid all impropriety and appearances of impropriety” to ensure that “[p]ublic confidence in the judiciary” is not “eroded by irresponsible or improper conduct by Judges.” See Canon 2A. Respondent admits that he acted irresponsibly or improperly thereby eroding public confidence in the judiciary, contrary to Canon 2A of the Code of Judicial Conduct. The Master found that, “[e]ach incident took place, in whole or in part, in a location open to and observable by the public and involved a member of the public” and thus violated Canon 2A.

¹⁵ Tr. at 22:6-7.

Canon 2B requires a Judge to “respect and observe the law and to conduct himself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary.” See Canon 2B. Respondent admits that he conducted himself in a manner that violated Canon 2B. The Master found that Respondent “allowed his unreasonable and unmanageable anger to govern his words and conduct by calling Mr. Adams an epithet, committed an assault and battery upon the person of Mr. Adams and challenged Mr. Adams to a physical altercation. This incident took place in a location open to and observable by the public.” The Master concluded Respondent violated Canon 2B.

MCR 9.104(A)(2) states that “conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach” constitutes misconduct and justifies discipline. The Master found that Respondent “allowed his unreasonable and unmanageable anger to govern his words and conduct, while purporting to act in his official capacity as a Judge of the 36th District Court, in two separate incidents... Each incident took place, in whole or in part, in a location open to and observable by the public, and involved a member of the public.” Respondent’s conduct constituted misconduct in violation of the Court Rule.

MCR 9.104(A)(5) prohibits conduct that “violates a criminal law of a state or of the United States.” The Master found that Respondent violated this Rule by allowing” his unreasonable and unmanageable anger to govern his words and conduct by calling Mr. Adams an epithet, committed an assault and battery upon the person of Mr. Adams, and challenged Mr. Adams to a physical altercation. “This incident took place in a location open to and observable by the public” in violation of state law.

The Commission adopts the Master's Findings of Law and recommends that a sanction be imposed.

DISCIPLINARY ANALYSIS

At the hearing, Respondent voluntarily acknowledged that a 90 day suspension without pay would be an appropriate sanction.¹⁶ In determining the appropriate sanction for judicial misconduct, the Commission has considered the various relevant factors outlined by the Michigan Supreme Court. See In re. Brown, 461 Mich 1291, 1292-93; 625 NW2d 744 (1999).

A. Misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct

Respondent has a history of incidents in which he failed to control his anger, the first being In re Bradfield, 448 Mich 1229; 531 NW2d 711 (1995). In that case, Respondent consented to the following facts:

[A] dispute arose between Respondent and another motorist over a parking space at the Fairlane Town Center. Security Officers at the mall interceded and determined that neither Respondent nor the other motorist could have the parking space. The other motorist then vacated the parking spot... As Security Officer Erik Dupin waived a third motorist into the parking space, Respondent accelerated his car into the parking space striking the Security Officer. This action resulted in injuries to Security Officer Dupin for which he sought medical attention. Respondent's abrupt movement of his vehicle was done without regard for the safety of the officer and reflected Respondent's sole concern with obtaining the parking space to which Respondent believed himself entitled.

Decision and Recommendation for Order of Discipline, Formal Compl. No. 49, March 21, 1995 at ¶¶ 5-6. On March 21, 1995, Respondent was publicly censured.

On January 23, 2002, Respondent was publicly censured, suspended from the performance of his judicial duties for a period of thirty days without pay and ordered to

complete an anger management counseling program. In re Bradfield, 465 Mich 1309; 638 NW2d 107 (2002). In that matter, Respondent consented to discipline for his conduct on the bench in two criminal cases, including yelling at a defendant and failing to follow the proper disqualification procedures.

Respondent has repeatedly breached the Code of Judicial Conduct and failed to conduct himself in an appropriate, controlled manner. Respondent has been warned that his conduct was improper. "He cannot justifiably assert ignorance of the error of his ways." In re Moore, 464 Mich 98, 119; 626 NW2d 374 (2001). His actions are far more serious than an isolated instance of misconduct.

B. Misconduct on the bench is usually more serious than the same misconduct off the bench.

Although Respondent's conduct took place off the bench, a Judge must "behave as though he is always on the bench." In re Bennett, 403 Mich 178, 199; 267 NW2d 914 (1978).

C. Misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety.

In this matter, Respondent's actions were not prejudicial to the actual administration of justice.

D. Misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does.

Respondent has admitted that his conduct implicated the appearance of impropriety. On both occasions Respondent introduced himself as a Judge and implied

Continued from previous page
16 Tr. at 22:6-7.

that he was acting in his official capacity as an officer of 36th District Court. Respondent failed to govern his conduct in public places. His assault of Mr. Adams occurred on the sidewalk in front of onlookers. In his letters to Mr. Adams and Judge Ross Adams, he acknowledged that his actions were inappropriate and an "embarrassment to myself and to the office that I hold."

A Judge's conduct may violate the Code of Judicial Conduct whether criminal charges were filed or not, or even in cases in which a Judge has been acquitted in criminal proceedings. See In re Halloran, 466 Mich 1219; 647 NW2d 505, 506 (2002) (citations omitted). When Respondent angrily poked Mr. Adams in the chest several times outside the courthouse, he committed both a criminal and a civil assault and battery.

E. Misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated.

Respondent's conduct was deliberate. There were multiple points in time over the course of events in both incidents where Respondent could have cooled off and controlled his behavior. Despite these opportunities, Respondent displayed a "willful readiness to escalate a confrontational situation."

F. Proportionality

Equivalent misconduct should be treated equivalently. See Brown, 461 Mich at 1293. In comparable situations, sanctions have included suspension without pay and completion of anger management counseling. See Moore, 464 Mich at 132 (suspending Judge for six months without pay where Judge had history of prior complaints), Bradfield, 465 Mich 1309 (suspending Respondent without pay for 30 days and ordering him to complete anger management counseling), Bennett, 403 Mich at 199

(suspending Judge without pay for one year where Judge's public use of profane and abusive language in abusive manner demonstrated violation of judicial canons).

The Supreme Court has imposed a five year suspension without pay under similar circumstances. In Matter of Del Rio, the Judge instigated an "acrimonious confrontation" with a police officer. 400 Mich 665, 710; 256 NW2d 727 (1977). He told the officer that he was acting in his official capacity as a Judge. He "grabbed Sergeant Michalek's shoulder, spun him around and poked him in the chest" outside an elevator in a police precinct. In separate incidents, Judge Del Rio yelled at a prosecuting attorney, a defense attorney and used improper and abusive language. Id. at 719-22. The Commission found that the Judge had committed misconduct. The Supreme Court suspended him for five years without pay.

At the hearing before the Commission, Respondent stated that he believed an appropriate sanction would be a suspension of 90 days without pay.

Respondent has failed to change or modify his conduct even after acknowledging that his behavior is inappropriate. Respondent has repeatedly been disciplined by the Michigan Supreme Court, including public censure and suspension without pay for 30 days. No previous sanction, including completion of anger management counseling, has altered his conduct in any way. He has served as a Judge for twenty years, and is admittedly aware of the judicial ethical standards. Respondent's failure to control himself before the public which he serves constitutes misconduct and has had a deleterious effect upon the integrity of and the respect for the judiciary. See Moore, 464 Mich at n.20.

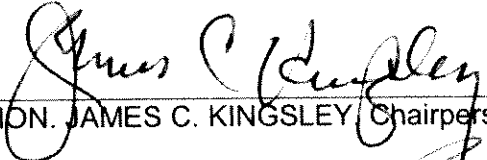
The Commission has considered the nature of Respondent's misconduct and the fact that he has been disciplined twice by the Supreme Court for similar behavior. The Commission finds that the sanctions previously imposed, including public censure, a 30 day suspension and completion of anger management counseling, have clearly failed. After reviewing all the evidence, and in particular taking Respondent's history into account, the Commission is convinced that a harsh sanction is required.


RECOMMENDATION

Upon resolution of the Commission, pursuant to MCR 9.221(C), and in conjunction with Respondent's admission to the acts of judicial misconduct as set forth above, the Commission recommends that the Supreme Court of Michigan enter an order to:


- (1) **SUSPEND** Respondent from the performance of his judicial duties for a period of one year without pay, effective the next business day following entry of the order; and
- (2) **REQUIRE** Respondent to complete intensive psychological treatment to control his anger by a health care professional of Respondent's choosing, contingent upon approval of Respondent's selected psychotherapist by the Commission. The counseling will occur on a schedule as determined appropriate by the health care professional, who shall provide the Commission with quarterly reports detailing Respondent's attendance at those sessions.

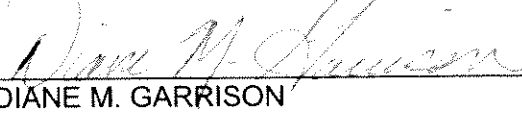
JUDICIAL TENURE COMMISSION OF
THE STATE OF MICHIGAN


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